

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 State Bar No. 91740
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5556
5 Facsimile: (415) 703-5480
Attorneys for Complainant

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7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2012-422

12 **JAMES MICHAEL LOWRY**
13 **A.K.A. JAMES LOWRY**
14 **8521 Windlass Drive**
15 **Huntington Beach, CA 92646**

A C C U S A T I O N

16 and

17 **139 Lincoln Way**
18 **San Francisco, CA 94122**

19 **Registered Nurse License No. 601043**

20 Respondent.

21 Complainant alleges:

22 **PARTIES**

23 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
24 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
25 Consumer Affairs.

26 2. On or about June 27, 2002, the Board of Registered Nursing issued Registered Nurse
27 License Number 601043 to James Michael Lowry, a.k.a. James Lowry (Respondent). The
28 Registered Nurse License was in full force and effect at all times relevant to the charges brought
herein and expired on October 31, 2011. The registered nurse license has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Business and Professions Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Business and Professions Code, in pertinent part, states:
"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:
"(a) Unprofessional conduct

7. Section 2762 of the Business and Professions Code, in pertinent part, states:
"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:
. . . .

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
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1 himself or herself, any other person, or the public or to the extent that such use impairs his or her
2 ability to conduct with safety to the public the practice authorized by his or her license.

3 . . .

4 8. California Code of Regulations, title 16, section 1444, provides, in pertinent part that
5 a conviction or act shall be considered to be substantially related to the qualifications, functions
6 or duties of a registered nurse if to a substantial degree it evidences the present or potential
7 unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or
8 welfare.

9 9. Section 125.3 of the Business and Professions Code provides, in pertinent part, that
10 the Board may request the administrative law judge to direct a licentiate found to have committed
11 a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
12 investigation and enforcement of the case.

13 FACTUAL BACKGROUND

14 10. Respondent was employed as the Director of Nursing at Saint Francis Memorial
15 Hospital (SFMH), located at 900 Hyde Street, in San Francisco, California. On or about August 6,
16 2010, the Board of Registered Nursing received a complaint from Tony Jackson, Chief Operating
17 Officer at SFMH. Mr. Jackson reported that respondent had been tested for drug and alcohol
18 abuse by SFMH and the test results were positive for alcohol. Respondent was placed on
19 administrative leave for approximately three months and during this period he voluntarily sought
20 treatment. Respondent successfully completed a treatment program and he was allowed to return
21 to work at SFMH. Subsequently, respondent appeared to be intoxicated while at work and he told
22 Mr. Jackson that he was not feeling well and respondent was allowed to go home. Mr. Jackson
23 was concerned that respondent was drinking alcohol again and requested that an independent
24 monitor be obtained to evaluate respondent. Respondent never returned to work at SFMH and he
25 contacted the hospital by telephone and verbally gave his resignation and then mailed in his
26 written resignation. On or about September 28, 2011, the Board received letter from respondent's
27 attorney, which was signed by respondent, indicating that respondent has left the practice of

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1 nursing to pursue a career in business. Respondent's registered nurse pocket license was enclosed
2 in the letter.

3 FIRST CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct - Use of Alcohol/Drugs)

5 11. Respondent is subject to disciplinary action under Business and Professions Code
6 section 2761(a) on the grounds of unprofessional conduct, as defined by Business and Professions
7 section 2762(b) in that while he was employed as the Director of Nursing at Saint Francis
8 Memorial Hospital he used alcoholic beverages to an extent or in a manner dangerous or injurious
9 to himself or others as set forth in paragraph 10, above.

10 SECOND CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct)

12 12. Respondent is subject to disciplinary action under Business and Professions Code
13 section 2761(a) in conjunction with California Code of Regulations, section 1444, in that while he
14 was employed as the Director of Nursing at Saint Francis Memorial Hospital (SFMH) in San
15 Francisco, California he tested positive for alcohol while at work and on another occasion, after
16 he had successfully completed an alcohol treatment program, he appeared to be intoxicated at
17 work. The latter incident concerned hospital staff to the point that an independent monitor was
18 requested to evaluate respondent. The aforementioned incidents involving Respondent's use of
19 alcohol while at work is substantially related to the qualifications, functions or duties of a
20 registered nurse and evidences, to a substantial degree, Respondent's present or potential
21 unfitness to practice in a manner consistent with public health, safety, or welfare.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matter's herein alleged,
24 and that following the hearing, the Board of Registered Nursing issue a decision:

25 1. Revoking or suspending Registered Nurse License Number 601043, issued to James
26 Michael Lowry, a.k.a. James Lowry;

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2. Ordering James Michael Lowry, a.k.a. James Lowry, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 12/30/2011

for Maureen Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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